

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548*CBM*

FILE: B-194031

DATE: MAY 1 1979

*10,020**AGC 00016*MATTER OF: Veterans Administration: Repair and Maintenance
of Congressional Cemetery

DIGEST: Federal government owns approximately 1/2 acre of Congressional Cemetery, a 30 acre cemetery in Washington, D.C., the major part of which is owned by Christ Church, Washington Parish. Jurisdiction over government-owned portion was transferred from Army to Veterans Administration (VA) pursuant to National Cemeteries Act of 1973. While VA may use its operating expense appropriations to maintain government-owned portions, it is not authorized to use funds for repair and maintenance of the private areas on theory that they are necessary, proper or incident to repair and maintenance of government-owned areas. Such expenditures would also violate the rule prohibiting permanent improvements of private land in the absence of statutory authority.

The Administrator, Veterans Administration (VA), has requested our decision on whether funds appropriated to the VA by the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1979, Pub. L. No. 95-392 (September 30, 1978), 92 Stat. 791, 802, are available to maintain and enhance the Congressional Cemetery located in Washington, D.C. For the reasons discussed below we conclude that the funds are available only with respect to the government-owned parts of the Cemetery.

The Congressional Cemetery was established by private individuals in 1807 and conveyed without cost to Christ Church, Washington Parish, in 1812. In 1817, the Vestry of the Church assigned 100 burial sites within the Cemetery for use of the United States. Subsequently, a number of prominent Americans, including members of Congress and government officials who had died in Washington, were buried in the Cemetery. In fact, Congressional Cemetery served as the national cemetery until Arlington National Cemetery was established after the Civil War. S. Rep. No. 94-1154 (on S. 3441), 94th Cong. 2d Sess. 1-2 (1976).

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The majority of the plots in the Cemetery are owned by Christ Church and private individuals. A relatively small number, some 806 non-contiguous lots, occupying a total of less than half an acre out of the thirty acres comprising the Cemetery, are owned by the Federal Government. The last interment made in one of the Government plots was in 1902. The Cemetery has been described as "a museum of 19th century sculpture and a study in the evolution of mortuary sculpture over the last 150 years." Hearings on S. 3441 Before the Subcommittee on Parks and Recreation of the Senate Committee on Interior and Insular Affairs, 94th Cong. 2d Sess. 84 (1976) (statement of Senator Hugh Scott). Recently, however, its condition has deteriorated. Waist-high weeds, vandals, roving wild dogs and snakes have been cited as current elements of the deterioration.

The fiscal year 1979 VA appropriations (Pub. L. No. 95-392, supra), do not include a specific appropriation for Congressional Cemetery. However, the appropriation entitled "General Operating Expenses" provides in part as follows:

"For necessary operating expenses of the Veterans Administration, not otherwise provided for, including * * * cemeterial expenses as authorized by law, * * * \$615,964,000." (Emphasis added.)

The bill reported by the House Appropriations Committee included funds for the Congressional Cemetery. The report noted:

"Finally, within the funds provided, \$225,000 is included for repair and renovation of the Congressional Cemetery at Washington, D.C." H.R. Rep. No. 95-1255, 95th Cong., 2d Sess. 48 (1978).

Specific funding for Congressional Cemetery is not mentioned in either the Senate Appropriations Committee report (S. Rep. No. 95-1060) or the conference report (H.R. Rep. No. 95-1569).

The VA Administrator, in his request for our decision, states:

"While we understand and wish to comply with the intention expressed in House Reports No. 95-1255 and 95-506, my General Counsel has tentatively concluded that the Veterans Administration is without legal authority to expend such funds for the maintenance of private property. This determination is based on the well-established rule that appropriated funds cannot be used for permanent improvements on private property in the absence of express statutory authority. * * *

From a review of the relevant statutes, the General Counsel has concluded that the requisite specific authority required in order to authorize the expenditure of appropriated funds on private property does not exist in this case.

"The Veterans Administration is authorized under the general authority found in section 1004(e) of title 38, United States Code, to contract for the care and maintenance of cemeteries under the Administrator's jurisdiction. But Congressional Cemetery, except for a small one-half acre plot, is not under our jurisdiction. Furthermore, in the VA's current appropriation act, there is no specific authorization which could be deemed to permit the expenditure of appropriated funds for the privately owned portion of the Congressional Cemetery.

"Finally, we believe that we cannot justify the expenditure of this money under the theory of maintaining and enhancing the approximately one-half acre of Government-owned plots in the 30-acre Cemetery by improving the condition of the surrounding private areas. In view of the rather meager expenditures which were made for the care and maintenance of the Government plots last year, approximately \$2,000, and the tremendous undertaking required to revitalize the private portions of the Cemetery, an expenditure of \$225,000, would raise serious legal questions."

In our opinion, the question presented requires examination of the following areas:

- (1) the VA's statutory authority with respect to Congressional Cemetery; and
- (2) the extent to which the VA may expend funds for repair and maintenance of the privately-owned parts of the Cemetery as expenditures necessary, proper or incidental to its authority over the government-owned areas.

I. VA's Jurisdiction Over Congressional Cemetery

We agree with the VA that it does not have jurisdiction over the entire Cemetery but only over those lots and plots owned by the government. From 1902 to 1973, the War Department (Department of the Army) maintained the government-

owned lots. The National Cemeteries Act of 1973, Pub. L. No. 93-43, 38 U.S.C. § 1000 et seq. (1976) transferred jurisdiction from the Secretary of the Army to the VA of certain National Cemeteries and "any other cemetery (including burial plots), memorial, or monument under the jurisdiction of the Secretary of the Army * * * which the President determines would be appropriate in carrying out the purposes of this Act." Pub. L. No. 93-43, § 6(a)(1), 87 Stat. 81. Pursuant to this provision, the VA assumed jurisdiction over the government-owned portion of the Cemetery on September 1, 1973. Congressional Cemetery as a whole was not considered to be a National Cemetery within the meaning of the Act. Indeed, the Senate Report on the bill which became Pub. L. No. 93-43 stated:

"As part of the study [Comprehensive Study of the VA Administrator], the Committee also desires that the Administrator give close consideration to acquiring as part of the National Cemetery System the Congressional Cemetery consisting of approximately 30 acres * * *. The Congressional Cemetery is now owned by Christ Church, Washington Parish * * *. Further information received by the Committee indicates that because of numerous high priority projects and limited grant funds, it appears unlikely that funds can be provided for the rehabilitation of the Congressional Cemetery within the foreseeable future. Accordingly, the Committee believes that acquisition of this cemetery within the National Cemetery System would appear to be quite appropriate." S. Rep. No. 93-55 93d Cong. 1st Sess. 1973 U.S. Code Cong. & Ad. News 1401, 1416.

Also, subsequent to the transfer of the government-owned portions of the Cemetery to the VA, legislation was enacted in 1976 authorizing the Architect of the Capitol to:

"[P]erform such work as may be necessary to prevent further deterioration of, and to maintain, those sections of * * * Congressional Cemetery which are of historical significance, including those sections in which former Members of the Senate and House of Representatives are buried, and including any such work in the remainder of the cemetery as he determines to be necessary to protect the historical sections." Pub. L. No. 94-495 (October 14, 1976), 90 Stat. 2373.

Pub. L. No. 94-495 further authorized the appropriation of \$175,000 for fiscal year 1978 and \$75,000 for fiscal year 1979 for the maintenance and preservation work. An additional \$50,000 for fiscal year 1978 was authorized to be appropriated for a study "for the purpose of determining the continuing maintenance and preservation needs for those historical sections of the Congressional Cemetery."

The Senate Appropriations Committee included \$225,000 for the Architect of the Capitol to restore and maintain the historic sections of the Congressional Cemetery in the Legislative Branch Appropriations bill for fiscal year 1978 (H.R. 7932) pursuant to Pub. L. No. 94-495. S. Rep. No. 95-338, 95th Cong. 1st Sess. 60 (1977). However, the funds were never appropriated. Both the House Appropriations Committee and the Conference Committee specifically denied the funds. The conference report stated:

"The Conferees are also agreed that the restoration and upkeep of the Congressional Cemetery is not a matter that should be funded in the Legislative Branch Appropriation bill and [have] denied the request without prejudice."

H.R. Rep. No. 95-506, 95th Cong., 1st Sess. 7 (1977). See also the report of the House Appropriations Committee, H.R. Rep. No. 95-450, 95th Cong., 1st Sess. 32-33 (1977).

II. VA's Authority to Expend Funds on Congressional Cemetery

The Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1979, supra, appropriated funds to the VA, among other things, for "cemeterial expenses as authorized by law." (Emphasis added.) The only law that authorizes VA to do anything with respect to Congressional Cemetery is the National Cemeteries Act of 1973, and, as discussed above, the VA's jurisdiction under that Act is limited to the government-owned portions.

Section 628 of 31 U.S. C. provides:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

This does not mean that every expenditure must be expressly provided by statute. We have long recognized that, where an appropriation is made for a particular object, by implication it confers authority

to incur expenses which are necessary or proper or incident to proper execution of the object unless there is another appropriation which makes more specific provision for such expenditures. E.g., 55 Comp. Gen. 872, 875 (1976):

The VA asserts that it cannot justify expenditure of funds out of its general operating expenses "under the theory of maintaining and enhancing the approximately one-half acre of government-owned plots in the thirty acre Cemetery by improving the condition of the surrounding private areas." We generally give considerable weight to an administrative determination of necessity made by the agency responsible for implementing a statute. Here, the VA has concluded that it cannot make such a determination, and we agree. In our opinion, repair and maintenance of the entire Cemetery cannot be justified as necessary for upkeep of the government-owned areas. Each plot is a separate unit, and, for most purposes, can be maintained individually. Further, we cannot find that repair and maintenance of the entire Cemetery is a mere incident to the repair and maintenance of the government-owned areas. The government's proprietary interest in the Cemetery is rather small, approximately a half-acre of thirty, that half-acre dispersed throughout the Cemetery. The improvements that have been suggested-landscaping, drainage and security installations among others, in our view would primarily benefit the private owners and would involve disproportionately large costs in comparison to the cost of maintaining the government-owned plots.

In addition, there is a longstanding rule, e.g., 6 Comp. Dec. 295 (1899), that appropriated funds may not be used by a government agency for the permanent improvement of privately-owned property in the absence of express statutory authority. 53 Comp. Gen. 351 (1973). This rule is based on the principle that no government officer is authorized to give away government property in the absence of specific legislation. 38 Comp. Gen. 143, 145 (1958). However, such improvements are not prohibited in all cases, and exceptions have been recognized in certain situations, as summarized below:

"A number of limited exceptions to the rule have been made over the years when it appeared that the granting of such an exception would prove particularly advantageous to the Government.* * * In each instance, before granting the exception, we determined that (1) the improvements, were incidental to and essential for the accomplishment of the purpose of the appropriation; (2) the cost of the improvement was in reasonable proportion to the overall cost of the lease or contract price; (3) the improvements were used for the principal benefit of the Government; and (4) the interest of the Government in the improvements was fully protected." 53 Comp. Gen. 351, supra, at 352.

As noted above, the improvements in this case would primarily benefit the private owners, and their cost would be disproportionately large in relation to the cost of maintaining the government-owned portions of the Cemetery. Thus, we do not believe the necessary criteria exist to justify an exception to the rule in this case.

Finally, it is true that on several occasions in the past, the Congress did appropriate funds for the repair and improvement of Congressional Cemetery. However, unlike the appropriation in this case, those appropriations either were limited to the government-owned plots, 4 Stat. 520 (1832), or the statutory authority for the repair was explicit. 11 Stat. 88 (1856); 17 Stat. 131 (1872).

In view of the foregoing, we conclude that the VA may not use its operating expense appropriations for the repair and maintenance of the privately-owned portions of Congressional Cemetery without specific statutory authority. This authority may take the form of authorizing legislation for the Veterans Administration or specific language in an appropriation act.

R.F.KELLER

Deputy Comptroller General
of the United States